

**May 15, 2007**

**DECISION AND ORDER  
OF THE DEPARTMENT OF ENERGY**

**Appeal**

Name of Petitioner: Terry M. Apodaca

Date of Filing: May 9, 2007

Case Number: TFA-0206

On April 23, 2007, Terry M. Apodaca (Appellant) filed an Appeal from a determination issued to her by the National Nuclear Security Administration Service Center (NNSA/SC) on April 11, 2007, in regard to a request for documents that Appellant submitted under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the Department of Energy in 10 C.F.R. Part 1004. This Appeal, if granted, would require that DOE expedite the processing of the Appellant's FOIA request.<sup>1</sup>

**I. Background**

The FOIA generally requires that documents held by federal agencies be released to the public on request. In the absence of unusual circumstances, agencies are required to issue a response to a FOIA request within 20 working days of receipt of the request. 5 U.S.C. § 552(a)(6)(A)(i). The FOIA also provides for expedited processing of requests in certain cases. 5 U.S.C. § 552(a)(6)(E).

On April 10, 2007, the Appellant filed a request for documents relating to incidents involving the unauthorized release of personally identifiable information (PII) at the NNSA/SC. Also included was a request for documents detailing information related to personnel disciplinary actions taken against NNSA/SC employees for the unauthorized release of PII. April 10, 2007 FOIA Request from Appellant to Carolyn A. Becknell, FOIA Officer, NNSA/SC (FOIA Request) at 1. The Appellant

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<sup>1</sup> On May 8, 2007, the Office of Hearings and Appeals received a second FOIA appeal from the Appellant. In that submission, the Appellant challenges the withholding of certain information from documents she received from the NNSA Service Center (Case No. TFA-0204). On the basis of her May 8 submission, we mistakenly assumed she had received the determination for which she had sought expedited processing, rendering moot her appeal regarding expedited processing. Consequently, in a letter dated May 8, 2007, we dismissed her appeal of NNSA/SC's denial of expedited processing for her FOIA request (Case No. TFA-0202). We have since been informed that the determination the Appellant is appealing in Case No. TFA-0204 is distinct from the request for which she had sought expedited processing. Consequently, her appeal of NNSA/SC's denial of her request for expedited processing is not in fact moot. Accordingly, we will rescind the dismissal of Case No. TFA-0202 and address the merits of her appeal concerning the denial of her request for expedited processing in this Decision (Case No. TFA-0206).

requested expedited processing of this FOIA request so that she could use the information to assist her in making a decision regarding “whether or not to accept a disciplinary action concerning violation of PII.” FOIA Request at 1.<sup>2</sup> The Appellant also stated that the disciplinary action could include loss of pay and that her inability to make an informed decision regarding the disciplinary action could pose an imminent threat to the health and safety of her daughter given the fact that the Appellant is the sole means of support for their family. FOIA Request at 1-2.

In a April 11, 2007 letter the FOIA Officer denied the Appellant’s request for expedited processing because she found that the information provided in the Appellant’s FOIA request did not demonstrate the “compelling need” required for NNSA/SC to grant her request for expedited processing.

On April 23, 2007, the Appellant submitted this appeal of NNSA/SC’s denial of expedited processing. The Appellant asks that OHA order NNSA/SC to expedite the processing of her FOIA request. In her Appeal letter, the Appellant argues that the possible loss of pay that a disciplinary action may entail would impact her ability to care for her daughter. She also argues that NNSA/SC has, in the past, granted expedited processing to requesters citing the same justification. Appeal at 1.

## **II. Analysis**

Agencies generally process FOIA requests on a “first in, first out” basis, according to the order in which they are received. Granting one requester expedited processing gives that person a preference over previous requesters, by moving his or her request “up the line” and delaying the processing of earlier requests. Therefore, the FOIA provides that expedited processing is to be offered only when the requester demonstrates a “compelling need,” or when otherwise determined by the agency. 5 U.S.C. § 552(a)(6)(E)(i). “Compelling need,” as defined in the FOIA, arises in either of two situations. The first is when failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual. The second situation occurs when the requester, who is primarily engaged in disseminating information, has an urgency to inform the public about an activity of the federal government. 5 U.S.C. § 552 (a)(6)(E)(v).<sup>3</sup>

The Appellant believes her request merits expedited processing under the “imminent threat to life or physical safety” criterion of the FOIA’s expedited processing provision. We must reluctantly reject her argument. We have recently contacted the Appellant and she has not formally been given disciplinary action. *See* April 26, 2007 Memorandum of Telephone conversation between the

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<sup>2</sup> The Appellant states that she had been involved in an “inadvertent release of PII” and had been told that she would be “served a disciplinary action.” Appeal at 1.

<sup>3</sup> As noted above, the FOIA also provides that agencies may provide expedited processing “in other cases determined by the agency.” 5 U.S.C. § 552 (a)(6)(E)(i)(II). As of the date of this decision DOE has not promulgated regulations providing for other grounds justifying expedited processing of FOIA requests.

Appellant and Richard Cronin, Assistant Director, OHA (April 26 Memorandum) at 1. Based on the information provided to us, it is not at all certain at this time that the Appellant will indeed face disciplinary action involving loss of income. Further, even if we assume this is the case, the harm that would be presented to her family from a reduction of income would not be "imminent." The Appellant's child does not have any special needs other than general support. *See* April 26 Memorandum at 1. While we recognize the potential impact from a reduction of any family's income, we cannot find that the harm would immediately endanger the life or physical safety of an individual. Thus we conclude that the Appellant has not established sufficient grounds to justify expedited processing of her request under the FOIA.

We must also reject the Appellant's other argument that NNSA/SC must provide expedited processing because it has previously provided such processing to other requesters. The sole standard by which an agency *must* provide expedited processing is given by the requirements of 5 U.S.C. § 552(a)(6)(E)(i). As discussed above, the Appellant's current situation does not mandate expedited processing under the FOIA. Accordingly, the Appellant's Appeal should be denied.

It Is Therefore Ordered That:

- (1) The Office of Hearings and Appeals May 8, 2007 determination dismissing the Freedom of Information Act Appeal filed by Terry M. Apodaca on April 23, 2007, OHA Case No. TFA-0202, is rescinded.
- (2) The Freedom of Information Act Appeal filed by Terry M. Apodaca, OHA Case Number TFA-0206, is hereby denied.
- (3) This is a final order of the Department of Energy from which any aggrieved party may seek judicial review pursuant to 5 U.S.C. § 552(a)(4)(B). Judicial review may be sought in the district in which the requester resides or has a principal place of business, or in which the agency records are situated, or in the District of Columbia.

William Schwartz  
Senior FOIA Official  
Office of Hearings and Appeals

Date: May 15, 2007